

REMARKS

Rejections

The specification was objected to under 35 U.S.C. 132. Claims 1-9, 11, 13, 24, and 26 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 1, 2, 4-9, 16-22 and 29 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,484,367 to Jenkins (hereinafter “Jenkins”). Claims 10-15 and 23-27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jenkins.

Rejections Under 35 U.S.C. § 132 and 35 U.S.C. § 112

Regarding the rejections under 35 U.S.C. §132 and 35 U.S.C. §112, first paragraph, Applicants respectfully disagree with Examiner’s assertion that new matter has been added to the application. The rejected claims all include limitations related to sliding or moving a controller along a barrier. Applicant respectfully submits that one of ordinary skill in the art would inherently know that the structure disclosed in Figs. 93-100 of the Application is capable of sliding along the barrier.

The U.S. Patent Office has also supported this position in the past. During the prosecution of U.S. Patent No. 6,658,680 (the ‘680 Patent), Examiner Robert G. Santos rejected originally filed claims 1 and 40 under 35 U.S.C. §102(b) as being clearly anticipated by U.S. Patent No. 5,279,010 (the ‘010 Patent) to Ferrand. The current application relies on the ‘010 Patent for priority, has the same relevant disclosure of this patent, and also incorporates the disclosure of this patent by reference. The claims rejected in the ‘680 Patent are similar to the claims rejected in the current application. Specifically, rejected claim 1 included a limitation reading “a controller positioned to slide along the first and second rails.” (copy enclosed). Claim 40 included the limitation of “the controller being moveable along the barrier when in the second position” (copy enclosed). Examiner Santos, in the mindset of one of ordinary skill in the art, stated that the above-mentioned claims were clearly anticipated by the ‘010 Patent, especially Figs. 79-82, and 85. (See Page 6, Paragraph 11, Office Action dated Oct. 4, 2002)(copy enclosed). Thus, the Patent Office in a previous Official Action also believed the disclosure of the present application provides support for a controller slidable along a barrier.

In the most recent official action, the Examiner has stated the device disclosed in Jenkins is “inherently slidable or can be moved along the length of the side guard.” (See

Page 3, Office Action dated May 18, 2004). Jenkins does not state that the device disclosed is slidable or can be moved along the length of the railing 40. The Examiner's position that the currently claimed sliding feature is not disclosed in the current application is inconsistent with Examiner's position that Jenkins inherently discloses such a feature. For at least the reasons described above, Applicants respectfully request removal of the objection of the specification and the rejection of claims 1-9, 11, 13, 24, and 26.

35 U.S.C. § 102(b) and 103(a) Rejections

Jenkins describes a NURSE CALL APPARATUS. A holder 10 for a nurse call device includes a flexible sheet 12 of sufficient length to completely wrap around a side railing of a hospital bed. A pocket 26 having side edges 28 and 30, a bottom edge 32 and a top edge 34 is fixed to the front of face 22 of flexible sheet 12.

Regarding claim 1, Jenkins does not disclose a "controller being positioned in the recess." The controller shown in Jenkins is not positioned in the recess of hospital railing 40. Therefore, Applicants respectfully request removal of the rejection of claim 1. Claims 2, 4, and 5 depend either directly or indirectly from properly allowable claim 1 and contain independently patentable subject matter. Removal of the rejections to claims 2, 4, and 5 is respectfully requested.

Regarding claim 6, Jenkins does not disclose a "controller positioned to slide along the interior surface" where "the barrier includ[es] an interior surface defining an opening." The holder 10 of Jenkins is positioned on the exterior surface of the recess. Holder 10 is not positioned to slide along the interior surface of railing 40. Therefore, Applicants respectfully request removal of the rejection of claim 6. Claims 7, 8, and 9 depend either directly or indirectly from properly allowable claim 6 and contain independently patentable subject matter. Removal of the rejections to claims 7, 8, and 9 is respectfully requested.

Regarding amended claim 16, Jenkins does not disclose "a controller including a housing and a flexible portion configured to couple the controller to the barrier, the housing and the flexible portion being affixed together." Holder 10 and the nurse call device are not affixed together. Therefore, Applicants respectfully request removal of the rejection of amended claim 16. Claims 17-22 depend either directly or indirectly from amended claim 16 and contain independently patentable subject matter. Removal of the rejections to claims 17-22 is respectfully requested.

Regarding amended claim 29, Jenkins does not disclose "a controller positioned directly under the upper rail, the controller including a housing and a flexible portion

configured to contact the upper rail.” The nurse call device of Jenkins is not directly under the upper rail of the barrier. Therefore, Applicants respectfully request removal of the rejection of amended claim 29.

Regarding claim 10, Jenkins does not disclose “a controller configured to be removably received in the first opening of the first barrier” as claimed in claim 10. As discussed above, the nurse call device of Jenkins is not received in an opening in railing 40. The nurse call device is placed in pocket 26 of holder 10 which is wrapped around railing 40 of a hospital bed. (See Jenkins, column 2, lines 36-45). Therefore, Applicants respectfully request removal of the rejection of properly allowable claim 10. Claims 11-15 depend either directly or indirectly from claim 10 and contain independently patentable subject matter. Removal of the rejections to claims 11-15 is respectfully requested.

Regarding claim 23, Jenkins does not disclose “a controller configured to be removably received in the first opening of the first barrier and removably received in the second opening of the second barrier” as claimed in claim 23. As discussed above, the nurse call device of Jenkins is not received in an opening in railing 40 regardless if one of ordinary skill in the art would find it obvious to provide Jenkins with a second railing 40 as suggested by the Examiner. Therefore, Applicants respectfully request removal of the rejection of properly allowable claim 23. Claims 24-27 depend either directly or indirectly from claim 23 and contain independently patentable subject matter. Removal of the rejections to claims 24-27 is respectfully requested.

Allowed Claims

Applicants acknowledge with appreciation that claims 28 and 30 have been allowed by the Examiner.

New Claims

Claims 31-51 have been added to the application. Claims 31-47 and 48-51 are new dependent claims. Claim 48 is a new independent claim that requires “a controller positionable in the recess at different positions along the first longitudinal axis” which is not suggested by Jenkins.

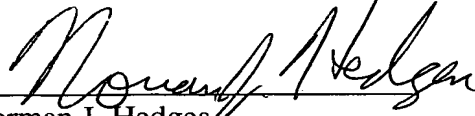
Final Remarks

Applicants submit that claims 1-51 are believed to be in condition for allowance. Such allowance is respectfully requested.

If necessary, Applicants request that this Amendment be considered a request for an extension of time for a time appropriate for the response to be timely filed. Applicants request that any required fees for filing this Response be charged to the account of Bose McKinney & Evans LLP, Deposit Account Number 02-3223.

Respectfully submitted,

BOSE McKINNEY & EVANS

A handwritten signature in black ink, appearing to read "Norman J. Hedges", written over a horizontal line.

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